

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, NA A/K/A  
WACHOVIA MORTGAGE, A  
DIVISION OF WELLS FARGO BANK,  
NA, F/K/A WACHOVIA MORTGAGE,  
FSB, F/K/A WORLD SAVINGS BANK,

Plaintiff,

v.

AMBROSIO REY HERRERA, et. al.,

Defendants.

Civil No. 12cv0402 JAH (RBB)

**ORDER *SUA SPONTE*  
REMANDING ACTION AND  
DENYING DEFENDANT'S  
MOTION TO PROCEED *IN*  
*FORMA PAUPERIS* AS MOOT**

On February 14, 2012, Defendant Ambrocio Rey Herrera filed a notice of removal of Superior Court of California, County of San Diego, case number 37-2011-00047946-CL-UD-CTL. In the removal, Defendant maintains Plaintiff's unlawful detainer action "arises from securities matter (and/or) use of fraudulent conveyances, conversions, deception and/or cloaked securitization matters which are being disguised in state proceedings done under color of state law. . ." Removal ¶ 7. Defendant asserts the unlawful detainer action includes allegations of sale or purchase that Plaintiff is entitled to possession thereof. Id. ¶ 11. Defendant maintains the removal and supporting information raises issues of federal subject matter and the unlawful detainer action is "in reality concealed or disguised security transactions." Id. ¶¶ 15, 16.

Defendant's removal also includes many allegations against Plaintiff regarding the property at issue and discusses a related action previously removed from state court to

1 federal court, Herrera v. Wells Fargo Bank, United States District Court for the Southern  
2 District of California case number 11cv2912, Superior Court case number 37-2011-  
3 00100641-CU-OR-CTL. Defendant attaches a copy of the related action but does not  
4 include any documents, including the complaint, of the removed action.

5 Although it is clear from the face of the removal and the information contained  
6 therein that Defendant sought to remove the unlawful detainer action, the docket entry  
7 for the removal indicates the related action, case number 37-2001-00100641, was  
8 removed along with this case. To the extent this action involves case number 37-2001-  
9 00100641, it is duplicative of Herrera v. Wells Fargo Bank, 11cv2912, and is subject to  
10 dismissal.

11 Although Defendant failed to attached the complaint of the unlawful detainer  
12 action he removed, it appears removal is improper. The federal court is one of limited  
13 jurisdiction. See Gould v. Mutual Life Ins. Co. v. New York, 790 F.2d 769, 774 (9th Cir.  
14 1986). As such, it cannot reach the merits of any dispute until it confirms its own subject  
15 matter jurisdiction. See Steel Co. v. Citizens for a Better Environ., 118 S.Ct. 1003, 1012  
16 (1998). “Jurisdiction is power to declare the law, and when it ceases to exist, the only  
17 function remaining to the court is that of announcing the fact and dismissing the cause.”  
18 Id. (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 614 (1868)). District courts must  
19 construe the removal statutes strictly against removal and resolve any uncertainty as to  
20 removability in favor of remanding the case to state court. Lowdermilk v. United States  
21 Bank Ass’n, 479 F.3d 994, 998 (9th Cir. 2007); Boggs v. Lewis, 863 F.2d 662, 663 (9th  
22 Cir. 1988). Removal jurisdiction is governed by 28 U.S.C. § 1441, *et seq.* A state court  
23 action can only be removed if it could have originally been brought in federal court.  
24 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987).

25 The defendant has the burden of establishing that removal is proper and must  
26 support its jurisdictional allegations with competent proof. Duncan v. Stuetzle, 76 F.3d  
27 1480, 1485 (9th Cir. 1996); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (*per*  
28 *curiam*); Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709, 712 n.3 (9th Cir.

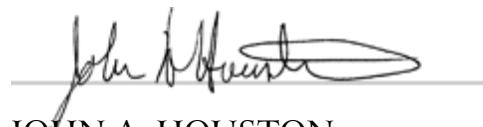
1 1990). There is a strong presumption against removal jurisdiction and federal jurisdiction  
2 “must be rejected if there is any doubt as to the right of removal in the first instance.”  
3 Gaus, 980 F.2d at 566 (citing Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064  
4 (9th Cir. 1979).

5 Defendant fails to meet this burden. Defendant maintains the action asserts federal  
6 questions. However, he contends this is an unlawful detainer action, which is brought  
7 pursuant to state law. Although Defendant maintains it is a “disguised security action,”  
8 he fails to submit the complaint to demonstrate it sets forth any federal claims as he  
9 contends, and, therefore, Defendant fails to provide competent proof of this Court’s  
10 jurisdiction. Accordingly, removal is improper and the Court finds *sua sponte* remand is  
11 appropriate.

12 Based on the foregoing, IT IS HEREBY ORDERED:

- 13 1. The instant complaint is *sua sponte* **REMANDED** to state court for all  
14 further proceedings;
- 15 2. Defendant’s motion to proceed *in forma pauperis* (Doc. No. 2) is **DENIED** as  
16 moot.;
- 17 3. To the extent the removal involved case number 37-2011-00100641-CU-  
18 OR-CTL, the action is **DISMISSED** as **duplicative**.

19 DATED: October 15, 2012

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21 JOHN A. HOUSTON  
22 United States District Judge  
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